ORIGINAL

IN THE SUPREME COURT OF OHIO

MR. ROBERT L. HILLMAN 529-955
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APPELLANT,

SUPREME COURT NO. 13-0502

ON APPEAL FROM THE TENTH DISTRICT APPELLATE COURT. APPEALS NUMBER 10AP-950

-VS-

JUDGE SUSAN BROWN, et. AL
TENTH DISTRICT APPELLATE COURT
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215

RESPONDENT'S

(THIS IS AND APPEAL OF RIGHT) ORIGINATING IN THE APPEALS COURT

MEMORANDUM IS SUPPORT OF JURISDICTION BY APPELLANT ACTING IN PRO SE.

FILED
MAR 25 2013
CLERK OF COURT
SUPREME COURT OF OHIO

RESPECTFULLY SUBMITTED
Robert L. Hillman

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THE APPELLATE COURT VIOLATED THE OHIO CONSTITUTIONS WHEN IT TOOK JURISDICTION OVER A CASE IN WHICH THERE WAS NO FINAL APPEALABLE ORDER, AND (1) MADE ERRONEOUS FINDINGS OF FACTS AND CONCLUSIONS OF LAW, AND (2) WHEN THAT COURT REFUSED TO VACATE AND SET ASIDE ALL COURT COST AND FEES ASSOCIATED WITH THE APPEAL IN WHICH IT NEVER HAD SUBJECT MATTER JURISDICTION TO RULE ON ..... VIOLATING OHIO CONST. ART. IV § 3 (B)(2) AND U.S. CONST. 1ST AND 14TH AMENDMENT 1-4

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EXPLINATION OF WHY THIS CASE IS A CASE OF GREAT PUBLIC INTEREST, AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.

THIS CASE AS IT STANDS THREATENS EVER CITIZENS ABILITY TO BE CONFIDENT IN FRANKLIN COUNTY COMMON PLEAS COURTS INTEGRITY, AND OR APPLY THE LAW IN A NON-BIAS MANNER, AS THE TENTH DISTRICT APPELLATE COURT HAS VIOLATED ALMOST EVER CIVIL RULE IN THE OHIO REVISED CODE, IN IT'S PETTY ATTEMPT TO PROTECT ONE PARTY OVER THE OTHER IN THIS CASE.

THIS IS A APPEAL OF RIGHT, BECAUSE THIS ACTION ORIGINATED IN THE TENTH DISTRICT APPELLATE COURT WITH THE APPELLANT FILING A MOTION TO VACATE AND SET ASIDE ALL COURT COST AND FEES ASSOCIATED WITH AN APPEAL ENTITLED ROBERT L. HILLMAN -VS- WILLIAM JOSEPH EDWARDS, APPEALS NO. 10AP-950 IN WHICH THE APPELLATE COURT RENDERED JUDGMENT, AND IMPOSED COURT COST IN A CASE IN WHICH IT NEVER HAD SUBJECT-MATTER-JURISDICTION.

OHIO COURTS HAVE GOTTEN SO FAR AWAY FROM SEEKING JUSTICE, AND PROTECTING STATUTORY RIGHTS OF, ESPECIALLY BLACK CONVICTED INDIVISUALS WHO BRING FORTH CLAIMS AGAINST ATTORNEY'S AND OTHER PROFESSIONALS IN OTHER AREA'S, THAT THE OHIO AND UNITED STATES CONSTITUTIONS NOLONGER HOLD ANY MEANING.

THIS COURT MUST NOT ONLY EXCEPT JURISDICTION TO HEAR THIS CASE BUT, THIS COURT MUST REVERSE THE APPELLATE COURTS DECISION RENDERED IN THIS CASE, AND SEND A MESSAGE THAT THE STATUTORY PROTECTION IN OHIO STILL EXIST OVER BIAS, PREJUDICE, AND POLITICAL FAVORS.

TABLE OF AUTHORITIES AND STATUTES

CIVIL RULE 54 (B) 1, 2, 3

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O.R.C. 2505.03 ..... 1, 2,

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VANDYKE -VS- CITY OF COLUMBUS, OHIO APP. 3d 2007-OHIO-2088 2

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PATTON -VS- DIEMER, 35 OHIO ST. 3d 65, 518 NE.2d 941 (1988) OHIO LEXIS 117 (1988) 5

BRIEF STATEMENT OF THE CASE AND FACTS

ON SEPTEMBER 11, 2009 PLAINTIFF FILED A SUIT AGAINST HIS FORMER COURT APPOINTED APPELLATE COUNSEL, MR. WILLIAM JOSEPH EDWARDS CASE NO. 09CVA09-13707 WITHIN THE FRANKLIN COUNTY COMMON PLEAS COURT. ON OCTOBER 8, 2009 MR. EDWARDS "OPPOSE" TO HIS INSURANCE COMPANY FILED AN ANSWER. ON OCTOBER 20, 2009 PLAINTIFF FILED A MOTION TO STRIKE MR. EDWARDS ANSWER AS BEING A SHAM. (OHIO LAW IS THE INSURER MUST DEFEND ITS CLIENTS)

ON JANUARY 15, 2010 PLAINTIFF FILED FOR SUMMARY JUDGMENT

✓ ON JANUARY 15, 2010 PLAINTIFF FILED A MOTION TO COMPEL MR. EDWARDS TO PROVIDE PLAINTIFF WITH THE NAME AND ADDRESS OF HIS CO-DEFENDANT (INSURANCE COMPANY <u>WHICH WAS NEVER ANSWERED AND NEVER RULED ON BY THE TRIAL COURT</u> ** IN FACT, NO PRE-TRIAL CONFERENCE WAS EVER HELD. ON FEBRUARY 27, 2010 PLAINTIFF — <u>FILED FOR ADMISSIONS WHICH WERE NEVER ANSWERED, AND NEVER RULED UPON</u>. ON FEBRUARY 16, 2010 PLAINTIFF FILED FOR DEFAULT JUDGMENT AGAINST MR. EDWARDS INSURANCE COMPANY FOR FAILING TO ANSWER THE COMPLAINT.

ON FEBRUARY 19, 2010 MR. EDWARDS FILED A RESPONDS TO PLAINTIFFS SUMMARY JUDGMENT AND REQUESTED SUMMARY JUDGMENT. ON MARCH 26, 2010 PLAINTIFF FILED A SECOND MOTION FOR SUMMARY JUDGMENT. ON SEPTEMBER 9, 2010 THE TRIAL COURT ILLEGALLY TOOK JUDICIAL NOTICE OF ANOTHER PROCEEDING INVOLVING THE PARTIES AND ENTERED SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT, WITHOUT ADMISSION OR DISCOVERY BEING PROVIDED BY THE DEFENDANT. ON OCTOBER 4, 2010 PLAINTIFF FILED A NOTICE OF APPEAL IN THE 10TH DISTRICT APPELLATE COURT, ON JUNE 2, 2011 THE FRANKLIN COUNTY APPELLATE COURT RENDERED A DECISION WITHOUT EVER HAVING OBTAINED SUBJECT-MATTER-JURISDICTION BECAUSE OHIO REVISED CODE SECTION 2505.02 2505.03 AND CIVIL RULE 54(B) WAS NOT COMPLIED WITH, AS THERE WERE NO JUST REASON FOR DELAY NOT MENTIONED IN THE JUDGMENT ENTRY OF THE TRIAL COURT DISPOSING ALL THE ISSUES OR GIVING THE APPEALS COURT JURISDICTION.

PROPOSITION OF LAW NO. ONE

THE APPELLATE COURT VIOLATED THE OHIO CONSTITUTIONS WHEN IT TOOK JURISDICTION OVER A CASE IN WHICH THERE WAS NO FINAL APPEALABLE ORDER, AND (1) MADE ERRONEOUS FINDINGS OF FACTS AND CONCLUSIONS OF LAW, AND (2) WHEN THAT COURT REFUSED TO VACATE AND SET ASIDE ALL COURT COST AND FEES ASSOCIATED WITH THE APPEAL IN WHICH IT NEVER HAD SUBJECT-MATTER JURISDICTION TO RULE ON VIOLATING OHIO CONST. ART. IV. §3(B)(2) AND U.S. CONST 1ST AND 14TH AMENDMENTS.

THE OHIO CONSTITUTIONS RESTRICTS AN APPELLATE COURT'S JURISDICTION TO THE REVIEW OF FINAL ORDERS OF LOWER COURT'S. AN ORDER OF A COURT IS A FINAL, APPEALABLE ORDER ONLY IF THE REQUIREMENTS OF "BOTH" CIVIL RULE 54 (B), IF APPLICABLE, AND O.R.C. SECTION 2505.02 AND 2505.03 ARE MET. SEE CHEF ITALIANO CORP -VS- KENT STATE UNIV, 44 OHIO ST. 3d 86, 541 NE. 2d 64 SYLLABUS (1989)

APPELLANT SUBMITS THAT AN APPELLATE COURT HAS NO CHOICE BUT TO SUA SPONTE DISMISS AN APPEAL THAT IS NOT TAKEN FROM A FINAL APPEALABLE ORDER. SEE NORTHEAST PROFESSIONAL HOME CARE INC -VS- ADVANCE HOME HEALTH SERVE, INC (OHIO APP. 5TH DIST)(04-12-2010) 188 OHIO APP. 3d 704, 936 NE.2d 964, 2010-OHIO-1640, ALSO SEE IN RE ADOPTION OF S.R.A., 189 OHIO APP. 3d 363, 2010-OHIO-4435, 938 NE.2d 432 (10TH DIST FRANKLIN COUNTY).

THEREFORE APPELLANT ARGUES THAT IT IS FUNDAMENTAL, THAT COURTS HAVE ONLY SUCH JURISDICTION AS IS CONFERRED UPON THEM BY THE CONSTITUTIONS OR BY THE LEGISLATURE ACTING WITHIN ITS CONSTITUTIONAL AUTHORITY. JURISDICTION MAY NOT BE ASSUMED BY A COURT BY RULE OR BY CONSENT, UNDER OHIO CONSTITUTION ART. IV SECTION 1 STATES; THE JURISDICTION OF THE VARIOUS COURTS IS TO BE DETERMINED BY THE GENERAL ASSEMBLY. SEE VILLAGE OF MONROEVILLE -VS- WARD, 21 OHIO APP. 2d 17, 254 NE. 2d 375 AT HN1

SUBJECT MATTER JURISDICTION IS DEFINED AS A COURTS POWER TO HEAR AND DECIDE CASES.

SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANYTIME, AND IT MAY BE RAISED SUA SPONTE BY A COURT. SEE DAVIS -VS- HEISLER, 2010-OHIO-98; OHIO APPELLATE COURT (4TH DIST, HOCKING COUNTY, CASE NO. 09CA12) DECIDED JANUARY 13, 2010 AT HN1.

APPELLANT SUBMITS THAT A JUDGMENT ENTRY WHICH DISMISSES (ONE) OF PLAINTIFF'S (FOUR) THEORIES OF RECOVERY IS NOT APPEALABLE UNDER CIVIL RULE 54(B). SEE JACKSON-VS-SCIOTO DOWNS INC, 80 OHIO APP. 3d 756, 610 NE. 2d 613 (1992). *** IN THE CASE AT BAR, NOT ONLY WERE THERE MOTIONS NOT RULED UPON CONCERNING DISCOVERY MATTERS, SANCTIONS, AND CLAIMS IN VIOLATION OF CIVIL RULE 54(B) AND R.C. 2505.02 AND 2505.03 AS BEING APART OF THE ORIGINAL JUDGMENT ENTRY BUT, THERE WAS ALSO NOT A NUNC PRO TUNC DETERMINATION OF NO JUST REASON FOR DELAY, GIVEN THE APPELLATE COURT JURISDICTION TO HEAR HILLMAN-VS-EDWARDS, APP. NO. 10AP-950 SEE KORODI -VS- MINOT, 531 NE. 2d 318 (1987) OHIO APP. LEXIS 10707 (1987).

ON FEBUARY 14, 2013 APPELLANT RAISED THE JURISDICTIONAL QUESTION BY FILING A MOTION TO VACATE COURT COST AND FEES ASSOCIATED WITH THE APPEAL BECAUSE THE TENTH DISTRICT APPELLATE COURT DID NOT HAVE JURISDICTION TO PASS JUDGMENT ON THE MERITS OF ANY CLAIMS PRESENTED TO IT, DISPITE APPELLANT FILING A NOTICE OF APPEAL, AS AN APPELLATE COURT IS OBLIGATED TO RAISE, SUA SPONTE, QUESTIONS RELATED TO IT'S JURISDICTION. SEE ALLSTATE INS. CO-VS-WITTA, 2011-OHIO-6068; 2011 OHIO APP. LEXIS 4952 (NOV 23, 2011 DECIDED) ACTIONS TAKEN BY A COURT SUBSEQUENT TO THE ENTRY OF A FINAL JUDGMENT THAT ARE NOT WITHIN THE SCOPE OF THE OHIO RULES OF CIVIL PROCEDURE HAVE BEEN CONSISTENTLY TREATED AS VOID SEE HN5 OF ALLSTATE INS. CO-VS-WITTA. ALSO SEE VANDYKE-VS-CITY OF COLUMBUS, OHIO APP. 3d —, 2007 OHIO-2088 AND LONGO-VS-LONGO OHIO APP. 3d —, 2006-OHIO-4943 (SEPT 22, 2006).

APPELLANT SUBMITS THAT ONLY UNAMBIGUOUS FINDING OF FACTS AND CONCLUSIONS OF LAW CONSTITUTES A "DECISION ANNOUNCED", PURSUANT TO CIVIL RULE 54(B). BUT, FINDINGS OF FACTS AND CONCLUSIONS OF LAW ARE NOT A JUDGMENT. SEE KENNEDY-VS- CLEVELAND, 16 OHIO APP. 3d 399, 476 NE. 2d 683, 16 OHIO B. 469, 1984 STATING;

> "CLEAR AND UNAMBIGUOUS PROVISIONS OF THE OHIO RULES OF CIVIL PROCEDURES MAYNOT BE CIRCUMVENTED THROUGH LOCAL COURT RULES.

IN THE CASE AT BAR, THE TENTH DISTRICT APPELLATE COURT BY ACCEPTING JURISDICTION, RULING ON THE MERITS OF A CASE, AND IMPOSING COURT COST AND FEES UPON APPELLANT, WHEN SUBJECT MATTER JURISDICTION WAS NEVER THERE'S WAS (PLAIN ERROR PURSUANT TO CIVIL RULE 51). APPELLANT UNDERSTANDS THAT THE PLAIN ERROR DOCTRINE IS NOT FAVORED AND MAY BE APPLIED ONLY IN EXSTREMELY RARE CASES INVOLVING EXCEPTIONAL CIRCUMSTANCES WHERE ERROR, TO WHICH NO OBJECTION WAS MADE AT THE TRIAL COURT SERIOUSLY AFFECTED THE BASIC FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF THE JUDICIAL PROCESS. *** AS IS THE CASE AT BAR *** THEREFORE CHALLENING THE LEGTIMACY OF THE UNDERLYING JUDICIAL PROCESS ITSELF. SEE GOLDFUSS-VS- DAVIDSON, 79 OHIO ST. 3d 116, 1997 OHIO 401, 679 NE. 2d 1099, 1997 OHIO LEXIS 1740 (1997) QUOTING SCHADE -VS- CARNEGIE BODY CO, (1982) 70 OHIO ST. 2d 207, 209, 24 OHIO OP. 3d 316, 317, 436 NE. 2d 1001, 1003.

APPELLANT SUBMITS THAT THE TENTH DISTRICT APPELLATE COURT HAS BECOME SO BIAS AND PREJUDICE TOWARDS HIS LITIGATION, THAT THAT COURT HAS NOW REFUSED TO GO BY THE LAW, INSTEAD IT'S ENTIRE FOCUS HAS BEEN ON FRUSTRATING APPELLANT'S EFFORTS IN A ATTEMPT TO MAKE APPELLANT GIVE UP, APPELLANT HAS FILED SEVERAL APPLICATIONS WITH

WITH THIS COURT TO DISQUALLIFY THE TENTH DISTRICT JUDGES FROM HEARING HIS CASES, WHICH HAVE SEEN THEM PROVIDE OPINIONS WHICH WERE NOT, AND CAN NOT BE SUPPORTED BY LAW. SEE KOLLMORGAN, PLAINTIFF -VS- V.G. RAGHAVAN, M.D. et. AL 2001-OHIO-3331 (AUG 7, 2001)(7TH DIST CASE NO. 97CV02789 AT [*4].

OHIO RULES OF CIVIL PROCEDURES (12)(H)(3) PROVIDES THAT;

"WHENEVER IT APPEARS BY SUGGESTION OF THE PARTIES OR OTHERWISE THAT THE COURT LACKS JURISDICTION OF THE SUBJECT-MATTER, THE COURT SHALL DISMISS THE ACTION. WHENEVER A WANT OF JURISDICTION IS SUGGESTED BY A COURT'S EXAMINATION OF THE CASE OR OTHERWISE, THE COURT HAS A DUTY TO CONSIDER IT, FOR A COURT IS POWERLESS TO ACT IN THE CASE WITHOUT JURISDICTION, EVEN THOUGH NOT ASSERTED, LACK OF SUBJECT-MATTER JURISDICTION MAY BE RAISED SUA SPONTE, BY THE COURT AT ANY STAGE IN THE PROCEEDINGS AS SUBJECT-MATTER-JURISDICTION IS THE BASIS FOR MANDATORY SUA SPONTE DISMISSAL BY THE COURT. SEE SHERMAN-VS-BURKHOLDER 1994 OHIO APP. LEXIS 5658 AT HN1.

THE TENTH DISTRICT APPELLATE COURT NEVER HAD JURISDICTION TO RULE ON CASE NUMBERS 10AP-58, 10AP-59 INVOLVING HILLMAN-VS-EDWARDS FILED ON JULY 29, 2010, NOR THE CASE OF HILLMAN-VS-EDWARDS CASE NO. 10AP-950 WHICH IS THE SUBJECT OF THIS APPEAL WHICH WAS FILED ON OCTOBER 4, 2010.

THE TENTH DISTRICT APPELLATE COURT'S DECISIONS HAS HAD ABSOLUTELY NOTHING TO DO WITH THE LAW, WHICH IS WH'I APPELLANT HAS FILED APPLICATIONS OF DISQUALIFICATION IN EACH OF THE ABOVE MENTIONED APPEAL. SEE SUPREME COURT NO. 09-AP-093, AND NO. 10AP-098 JUST TO MENTION (2) TIMES I FILED AGAINST THAT COURT. PURSUANT TO O.R.C. 2501.13.

CONCLUSION

APPELLANT SUBMITS THAT HIS SINGLE PROPOSITION OF LAW SHOULD BE SUSTAINED AND A ORDER ISSUED THAT BECAUSE THE TENTH DISTRICT APPELLATE COURT EXERCISED JURISDICTION OVER A CASE IN WHICH NO FINAL APPEALABLE ORDER EXIST, THAT SAID RULING, AND ORDER FOR COST AND FEES BE VACATED. AS A JUDGMENT RENDERED BY A COURT LACKING SUBJECT-MATTER JURISDICTION IS VOID AB INITIO, AND MAY BE VACATED BY VIRTUE OF THE INHERENT POWER OF THE COURT INDEPENDENT FROM THE GROUNDS FOR VACATION OF A JUDGMENT PURSUANT TO CIVIL RULE 60 (B). SEE PATTON-VS-DIEMER, 35 OHIO ST. 3d 65, 518 NE. 2d 941 (1988) OHIO LEXIS 117 (1988).

RESPECTFULLY SUBMITTED BY

Robert L. Nileman

APPELLANT

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT A TRUE COPY OF THE FOREGOING MEMORANDUM IN SUPPORT WAS SENT TO THE RESPONDENT'S/APPELLEE'S LOCATED AT 373 SOUTH HIGH STREET, COLUMBUS, OHIO 43215, BY REGULAR UNITED STATES MAIL SERVICE. ON THIS 21ST DAY OF MARCH 2013.

ROBERT L. NILEMAN

APPELLANT ACTING IN PRO SE.

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Robert L. Hillman,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-950
William Joseph Edwards,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JOURNAL ENTRY

Appellant's February 14, 2013 motion to vacate and set aside all court costs is denied.

/S/ JUDGE
Judge Susan Brown

cc: Clerk, Court of Appeals

Franklin County Ohio Court of Appeals Clerk of Courts- 2013 Feb 19 2:48 PM-10AP000950

Franklin County Ohio Court of Appeals Clerk of Courts- 2013 Feb 19 2:48 PM-10AP000950

Tenth District Court of Appeals

Date: 02-19-2013

Case Title: ROBERT L HILLMAN -VS- WILLIAM JOSEPH EDWARDS

Case Number: 10AP000950

Type: COURT ENTRY

So Ordered

/s/ Judge Susan Brown, P.J.

Court Disposition

Case Number: 10AP000950

Case Style: ROBERT L HILLMAN -VS- WILLIAM JOSEPH EDWARDS

Motion Tie Off Information:

1. Motion CMS Document Id: 10AP0009502013-02-1499980000

   Document Title: 02-14-2013-MOTION TO VACATE

   Disposition: 3200

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